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No. 913

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

INTERNATIONAL ASSOCIATION OF MACHINISTS, ETC.,

Petitioners,

vs.

THE JEFFREY GALION MANUFACTURING CO.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above case on September 3, 1965.

OPINIONS BELOW*

The proceedings before the District Court for the Southern District of Ohio, Eastern Division, is unreported and appears in the transcript of the record.

The opinion of the Court of Appeals for the Sixth Circuit is reported at 350 F. 2d 512, and appears herein in the Appendix.

Reference in this petition to "App. -a" is to the page number in the appendix of plaintiffs-appellants in the Court of Appeals.

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit of which review is sought, was entered on September 3, 1965.

An order extending time to file petition for writ of certiorari, dated December 1, 1965, extended time for filing to January 14, 1966.

Jurisdiction of this Court to review the said judgment of the United States Court of Appeals for the Sixth Circuit by writ of certiorari is invoked under 28 U.S.C., Section 1254 (1).

QUESTIONS PRESENTED

(1) Whether the provision in a collective bargaining agreement between a labor union and an employer, providing for arbitration of grievances, has been met when an arbitration award rendered under that agreement has been vacated, set aside, and held for naught by judicial decree and no further arbitration award is rendered.

(2) Whether a state court judicial finding that an arbitrator's award under a collective bargaining agreement is unenforceable because it is too vague also goes to the merits of all questions submitted to the arbitrator which then become res adjudicata in a proceeding to enforce arbitration of an unresolved grievance.

(3) Whether a federal court reviewing the effect of a judgment entry by a state court vacating an arbitration award to determine its effect upon the arbitrability of the grievance, can go behind the judgment entry, examine the opinion of the state court and of the arbitrator and decide upon the *merits* of the grievance.

STATUTE INVOLVED

The statutory provision involved is Section 301 (a) of the Labor Management Relations Act, 1947, 29 U.S.C. Section 185, which reads as follows:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined by this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT

Petitioner, a labor union representing certain employees of respondent as a duly certified collective bargaining representative, filed a grievance on behalf of those employees and under the contract provisions. That grievance proceeded to arbitration, was submitted and a ruling and decision handed down. Respondent employer then filed its petition to vacate the award, in the Court of Common Pleas of Franklin County, Ohio, the case was argued to the court and a decision rendered in the form of an opinion, duly docketed as a journal entry, as follows:

> This cause having come on to be heard before the Court, jury having been waived by the parties, upon the issues joined in the pleadings, the evidence and the arguments and briefs of counsel;
> The Court finds, upon the issues joined, in favor of the Plaintiff and against Defendants.
> It is therefore ordered, adjudged and decreed that the award of Mitchell H. Shipman, dated November 12, 1958, made in an arbitration proceeding between the Plaintiff and Defendants, described in the Petition of Plaintiff herein, shall be, and it hereby is, vacated, set aside and held for naught, and that Plaintiff recover from Defendants its costs herein expended.

Since an award that is vacated, set aside, and held for naught is no longer an award, leaving the parties to the grievance without an arbitration award and with the grievance still unresolved, demand was made upon the employer for arbitration, which was refused. Petitioner sought relief under Section 301 of the Labor Management Relations Act, 1947. (Title 29, U.S.C.A. Sec. 185), in the District Court. Upon defendant's motion for summary judgment the District Court found for the defendant. (App.-a 62a)

The court below affirmed the decision of the District Court, examining the reasoning behind the opinion of the judge of the state court and approving it. This was never in issue under Section 301, since this was not an appeal from the decision of the state court. While petitioners do not admit that the state court was correct in going behind the arbitration award and attacking the opinion, they do admit that the state court had authority under the Ohio statute on arbitration (App.-a 48-49a) to vacate the award because of the arbitrator's failure to fix the monetary amount of the award. If federal substantive law were to be applied, the state court should have remanded to the arbitrator to make the award definite, and should have refrained from attacking the award on the basis of the arbitrator's own opinion. However, since the state court had color of authority to vacate the award, it was not deemed advisable to appeal through the state judicial system but the award was regarded by petitioners herein as voided and the grievance as unresolved, and demand for arbitration again made.

It is the rule in Ohio that courts speak through their entries. (*Andrews v. Board of Liquor Control*, 164 Oh. State 275, 131 N.E. 2d 390; *Boyle v. Public Adjustment & Construction Co.*, 93 N.E. 2d 795; *Ohio, Ex. Rel. Ruth v. Hoffman*, 82 Oh. App. 266, 80 N.E. 2d 235.) The Ohio court

entry vacated the arbitration award. It said nothing relative to the merits of the grievance or whether the employer had or had not violated the provisions of the collective bargaining agreement. Since this part of the Ohio court's opinion could not be reached on appeal there has been in effect no arbitration and that part of the opinion which was in effect obiter dictum was not res adjudicata to bar the order to arbitrate sought under Section 301 of the Labor Management Relations Act.

REASONS FOR GRANTING THE WRIT

(1) The decision of the court below is in conflict with the decision of this court in *Steelworkers v. Warrier & Gulf Navigation Co.*, 363 U.S. 574. The dispute is arbitrable under the collective bargaining agreement and no valid and subsisting arbitration award exists covering the grievance. Also in conflict is *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, because the court below undertook to determine the merits of the grievance under the guise of interpreting the arbitration clause of the contract. In going behind the decree of the Ohio court and examining the trial judge's opinion in the light of the arbitrator's award, the court below placed itself in the position of overruling the arbitrator because their interpretation differed from his. Also in conflict is *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, holding that the rule forbidding resubmission to the arbitrator should not be applied in labor cases.

(2) The question presented is of importance in the admission of arbitration cases under collective bargaining agreements. Unless all cases similar to this are to be removed from the state court to the federal court, parties to such agreements must know whether federal substantive law is to be applied at all levels of the judicial system. If

an award can be vacated and held for naught by a state court and still be held to be a valid and subsisting award for the purpose of barring enforcement of the arbitration clause of a collective bargaining agreement, under Section 301 of the Labor Management Relations Act, removal to the federal courts is the only prudent course for a party who wishes to defend an award in his favor.

(3) Although the Ohio Court of Common Pleas had authority to modify or amend the arbitration award, it did not do so, leaving the award vacated, null and void, and of no effect. If a null and void award is to be the only fruit of a labor grievance, then a vital question is presented concerning the effectiveness of any arbitration clause in a collective bargaining agreement. Despite a journal entry that states the award is vague and unenforceable, the trial court did not seek to correct the award or order it remanded for correction. Leaving the parties with no award on the merits of the grievance is chaotic and dangerous, and it is the purpose of Section 301 of the Act to avoid this condition. It should be the purpose of the federal courts to effectuate the purposes of the Act.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

RUSSELL H. VOLKEMA,
Counsel for Petitioners.

APPENDIX A

No. 16003

UNITED STATES COURT OF APPEALS
For the Sixth Circuit

International Association of Machinists and Local Lodge No. 1038, International Association of Machinists, Plaintiffs-Appellants, vs. The Jeffrey Galion Manufacturing Company, Defendant-Appellee.

On Appeal from the United States District Court for the Southern District of Ohio, Eastern Division.

(Decided September 3, 1965.)

Before: Phillips and Edwards, Circuit Judges, and McAllister, Senior Circuit Judge.

McAllister, Senior Circuit Judge. This is an appeal from a decision of the district court granting a motion for summary judgment in favor of appellee company.

Appellant labor union brought suit under the Labor Management Relations Act, Title 29 U.S.C.A., Section 185 et seq., asking the court to compel appellee, The Jeffrey Galion Manufacturing Company, to submit grievances arising out of a collective bargaining agreement to an impartial arbitrator, under the provisions of the agreement. The grievances sought to be arbitrated were known as Grievance 189-57, and Grievance 32-58.

Grievance 189-57 stated that men in Department 40-42 were being laid off more than five days in one month in violation of the collective bargaining agreement.

Grievance 32-58 stated that Henry Weber was laid off for 53.5 hours on temporary layoff during one month, which

was 13.5 hours more than allowed by the bargaining agreement.

These two grievances were based upon an alleged violation of Article IX, Section 8, of the bargaining agreement.*

Upon denial by the company that it had violated the collective bargaining agreement, the two Grievances, 189-57 and 32-58, were submitted to an impartial arbitrator who was agreed upon by both parties.

There is a considerable history of litigation behind the present case. When the company was charged with the violation of the collective bargaining agreement by the union, the two Grievances, 189-57 and 32-58, were, as above mentioned, submitted to an impartial arbitrator who was agreed upon by both parties.

After a hearing, the arbitrator found that the provision of the collective bargaining agreement governing temporary layoffs was not applicable to the claimed grievances filed, and that it had not been violated by appellee company.

After having specifically found that appellee company had not violated the bargaining agreement provision with regard to temporary layoffs, the arbitrator then proceeded beyond the issue before him, and made an award of earnings in favor of grievants based upon contractual provisions and contentions which were not within the submission.

Because of the fact that the arbitrator's award was based on contractual provisions and contentions which were not submitted to him, and that the provision upon which the grievances were based was not violated by the appellee company and was not applicable to such grievances, appellee company filed a petition to vacate the award of the

* Section 8 of Article IX of the Agreement reads as follows:

"Temporary Layoff. In case of a temporary layoff for lack of work for a period not to exceed five (5) working days per calendar month due to manufacturing irregularities, such layoff may be made without regard to seniority."

arbitrator in the Court of Common Pleas of Franklin County, Ohio.

After a hearing and the submission of briefs, Judge Henry Holden of the Court of Common Pleas found in favor of the company and against the union, declared void the award of the arbitrator, and ordered it vacated.

In reply to contentions of appellant union, it is to be said that it is clear that the Court of Common Pleas of Ohio had jurisdiction to enter the judgment vacating the award, under Ohio Revised Code, Section 2711.01 et seq. Moreover, state courts have concurrent jurisdiction with federal courts in matters involving enforcement of collective bargaining agreements. *Smith v. Evening News Assn.*, 371 U.S. 195.

In his opinion and decision, Judge Holden held that the award of claimed loss of earnings by the employees, made by the arbitrator, was void. In the judgment entered by Judge Holden, it was stated that the court found, upon the issues joined, in favor of the company and against the union.

The principal issue before Judge Holden was whether or not the arbitrator exceeded his powers and authority in making the award. Appellee company contended that "the arbitrator, in violation of law and the said [bargaining] Agreement, exceeded his powers and authority, went beyond the issue before him and made an award in favor of grievants based upon contractual provisions and contentions not within the submission." Further, appellee company contended that the arbitrator found in favor of the company on the only issue raised by the grievances, holding that Section 8 of Article IX of the collective bargaining agreement, on which the grievances were based, was not applicable and had not been violated by the company.

Appellant union, however, in its answer, denied that the "arbitrator went beyond the issue before him" or that the "arbitrator exceeded his powers."

Judge Holden, therefore, in finding in favor of appellee company on the issues joined, stated (1) that the arbitrator had exceeded his powers and authority and went beyond the issues submitted to him when he made an award based on contractual provisions and contentions not within the submission, and (2) that the provision of the collective bargaining agreement between the company and the union, upon which the grievances were based, was not applicable and had not been violated by appellee company.

Appellant union moved for a new trial in the Court of Common Pleas of Franklin County, Ohio, and this motion was denied by Judge Holden. The union then moved to modify the judgment, which was also denied by Judge Holden.

The present suit in the district court was commenced by the union against the company to compel arbitration by the company of the same grievances that had been before the arbitrator and the Ohio Court of Common Pleas.

In answer to the suit of the union to compel arbitration, appellee company pleaded res adjudicata and estoppel by judgment; and moved for a summary judgment, which the district court granted.

On appeal, the union contends that it was entitled to an order from the district court compelling the appellee company to "*Re-arbitrate* the Grievances in Question." This claim is advanced upon the ground that the order of the Court of Common Pleas, "in vacating and completely setting aside the arbitrator's award leaves unfulfilled the Defendant's obligations under the Contract."

As has been observed, however, the Court of Common Pleas not only set aside the money award made by the ar-

bitrator in favor of the grievants on the ground that the arbitrator had exceeded his powers and went beyond the issues submitted to him, but the court also determined that appellee company had not violated the provision of the collective bargaining agreement upon which the grievances were based. Under these circumstances, appellant union is not entitled to have a *re-arbitration* of the same grievances based upon the same provision of the collective bargaining agreement, which have already been determined by an Ohio court of competent jurisdiction.

The district court properly considered that the determination of the Ohio Court of Common Pleas was res adjudicata; and the entry of the summary judgment is, accordingly, affirmed.

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vs.

THE JEFFREY GALION MANUFACTURING COMPANY,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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THE JEFFREY GALION MANUFACTURING COMPANY,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

QUESTIONS PRESENTED.

Whether the decision of a state court of competent jurisdiction, from which no appeal was taken, which accepts the opinion and findings of an impartial arbitrator on matters which are within the terms of the submission agreement while rejecting the arbitrator's award as being beyond the scope of that agreement, is res adjudicata, precluding a labor union from utilizing the medium of a second suit in a Federal court to obtain a re-arbitration of the same grievances.

STATEMENT OF THE CASE.

During the term of a collective bargaining agreement entered into between the petitioner and the respondent on November 19, 1956, the petitioner, on behalf of certain employees of the respondent, filed with the respondent the two grievances here in question, specifying that they were based on alleged violations of Article IX, Section 8 of the

agreement. (App. 4a-7a.)* The grievances were submitted to arbitration and the arbitrator rendered an Opinion and Findings in which he found that Article IX, Section 8, the only section of the agreement relied upon by the petitioner, had not been violated. (App. 15a.) Despite this finding in his Opinion in favor of the respondent, the arbitrator went on to grant an award of back pay to the grievants. (App. 19a.)

The respondent then filed a petition in the Common Pleas Court of Franklin County, Ohio, to vacate the Award of the arbitrator. In its decision, the Common Pleas Court pointed out that the express terms of Article XI, Section 4, c. of the collective bargaining agreement required the arbitrator "to confine himself to the issues before him." (App. 51a.) The court also observed that the Opinion and Findings of the arbitrator were that Article IX, Section 8 of the agreement had not been violated by the respondents. (App. 51a.) Concluding that the arbitrator, in granting the award of back pay, had exceeded his authority by going beyond the issues submitted to him for decision, the court accepted the Opinion and Findings of the arbitrator which were within the terms of the submission, vacated the Award, and granted judgment for the respondent. (App. 52a.) The petitioner's motions to modify the court's decree and for a new trial were overruled and no appeal from that decree was thereafter taken.

The petitioner then brought suit in the United States District Court, Southern District of Ohio, to compel rearbitration of the same grievances that had been before the arbitrator and the Ohio Common Pleas Court. The District

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* References to "App. __a" are to the page number of the appendix to the petitioner's brief as plaintiff-appellant in the Court of Appeals.

Court granted the respondent's motion for summary judgment on the grounds of res adjudicata and estoppel by judgment, and this judgment was affirmed on appeal by the United States Court of Appeals for the Sixth Circuit.

REASONS FOR REFUSING THE WRIT.

I. The Decision of the Arbitrator Is Final With Respect to Matters Within the Scope of the Submission.

Article XI, Section 4, c. of the collective bargaining agreement between the petitioner and the respondent directs that:

> "The arbitrator shall confine himself to the issues before him and his decision shall be final and binding on the parties."

Therefore, the petitioner itself has expressly agreed by contract that the arbitrator's decision, so far as he acts within the scope of his authority, is final and binding on the parties.

Even if the petitioner had not expressly so agreed, the law is clear that the decision of the arbitrator is final as to matters within the scope of the submission agreement. *Retail Clerks Ass'n v. Lion Dry Goods, Inc.*, 341 F.2d 715, 720 (6th Cir. 1965); *Local 63, Textile Workers Union v. Cheney Bros.*, 141 Conn. 606, 617, 109 A.2d 240, 244 (1954), *cert. denied* 348 U.S. 959 (1955); *General Exch. Ins. Corp. v. Harmon*, 288 Ky. 624, 628, 157 S.W.2d 126, 127-28 (1941); 5 AM. JUR. 2d *Arbitration & Award* § 147 (1962). The sole question submitted to the arbitrator was whether or not the company had violated Article IX, Section 8 of the collective bargaining agreement. Since the arbitrator found for the respondent on that question, the only one properly before him, the Opinion and Find-

ings of the arbitrator on that point are final and stand unchallenged.

The arbitrator's authority is limited by the terms of the submission agreement. Any action by the arbitrator in excess of that authority is void. *Truck Drivers Union v. Ulry-Talbert Co.*, 330 F.2d 562, 563, 565-66 (8th Cir. 1964); *Local 1078, UAW v. Anaconda Am. Brass Co.*, 149 Conn. 687, 689, 183 A.2d 623, 625 (1962); *Local 63, Textile Workers Union v. Cheney Bros.*, 141 Conn. 606, 613, 109 A.2d 240, 244 (1954), *cert. denied* 348 U. S. 959 (1955); *Carr v. Kalamazoo Vegetable Prod. Co.*, 354 Mich. 327, 331-32, 92 N.W.2d 295, 296-97 (1958); 5 AM. JUR. 2d *Arbitration & Award* §§ 124, 137 (1962). The arbitrator went beyond the terms of the submission agreement by granting the award of back pay and his actions in doing so were void. As it is proper to vacate that portion of an arbitrator's decision which exceeds his authority, leaving intact that portion which represents a valid exercise of his authority, the Common Pleas Court was correct in vacating the Award in favor of the petitioner, which the arbitrator arrived at by exceeding his authority, and leaving the decision in favor of the respondent as to the alleged violation of the contract. *Local 791, Int'l Union of Elec. Workers v. Magnavox Co.*, 286 F.2d 465, 466 (6th Cir. 1961).

Since state courts have concurrent jurisdiction with federal courts in matters involving enforcement of collective bargaining agreements, it was proper for the order vacating the void award to emanate from a state tribunal. *Smith v. Evening News Ass'n.*, 371 U.S. 195 (1962).

II. The Decisions of the Courts Below Are Not in Conflict With the Steelworkers Trilogy.

The *Steelworkers* cases involved an outright refusal by the employer to arbitrate the grievances in question. Here, the employer not only did not refuse to arbitrate the grievances, but the arbitration was carried out to a final and binding decision in favor of the employer on the sole issue submitted to the arbitrator. The fact that the result of the arbitration was unfavorable to the petitioner does not grant the petitioner the right to re-arbitrate the same grievances by resorting to another forum for the re-presentation of its case.

In fact, it is the respondent's position that is most consistent with the three *Steelworkers* cases. The common thread of those three cases is the desirability of arbitration as a method of settling industrial disputes with the arbitrator's decision on the merits being final and decisive, and the role of the courts being limited to determining which questions are subject to arbitration and which are not. *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 568 (1960); *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 583 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596, 598-99 (1960). That is precisely the role adopted by the lower courts in this case. No interpretation of those decisions will support the petitioner's contention that the courts herein undertook to determine the merits of the grievances under the guise of interpreting the arbitration clause of the contract or put themselves in the position of overruling the arbitrator because their interpretation of the contract differed from his. To the extent that the arbitrator remained within the terms of the submission agreement his Opinions and Findings were not disturbed by the courts

below. No attempt was made to weigh and decide the merits of the grievances. The findings of the arbitrator in this respect were adopted by the lower courts without question. Questions of contract interpretation, as determined by the arbitrator, were left unchanged. The question of whether or not the arbitrator had the power, under the contract and submission, to make the Award which he made was the sole question determined by the courts below. This is in full accord with the decisions of this Court in the *Steelworkers* cases.

III. The Doctrines of Res Adjudicata and Estoppel by Judgment Operate as a Defense to the Petitioner's Claim.

The doctrine of res adjudicata has been accepted and followed consistently by this Court since the decision in *Hopkins v. Lee*, 19 U.S. (6 Wheat.) 109, 113 (1821). In *Cromwell v. County of Sac*, 94 U.S. 351 (1877), Mr. Justice Field stated the rule for the Court as follows:

> "[T]he judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose."
>
> 94 U.S., at 352-53.

This statement of the doctrine of res adjudicata has been cited with approval in numerous cases decided by this Court: *Lawlor v. National Screen Serv. Corp.*, 349 U.S. 322, 326 (1954); *Partmar Corp. v. Paramount Pictures Theatres Corp.*, 347 U.S. 89, 90-91 (1954), *rehearing denied*, 347 U.S. 931 (1954); *Grubb v. Public Util.*

Comm'n, 281 U.S. 470, 479 (1930); *United States v. Moser*, 266 U.S. 236, 241 (1924); *Southern Pac. R.R. v. United States*, 168 U.S. 1, 49 (1897); *Johnson Co. v. Wharton*, 152 U.S. 252, 258 (1894); *Mason Lumber Co. v. Buchtel*, 101 U.S. 638, 639 (1880).

The basic principle of estoppel by judgment is similar to that of res adjudicata although estoppel by judgment has a more limited effect. In *Baltimore S.S. Co. v. Phillips*, 274 U.S. 316 (1927), Mr. Justice Sutherland characterized res adjudicata and estoppel by judgment as follows:

> "The effect of a judgment or decree as res adjudicata depends upon whether the second action or suit is upon the same or a different cause of action. If upon the same cause of action, the judgment or decree upon the merits in the first case is an absolute bar to the subsequent action or suit between the same parties or those in privity with them, not only in respect of every matter which was actually offered and received to sustain the demand, but also as to every ground of recovery which might have been presented. But if the second case be upon a different cause of action, the prior judgment or decree operates as an estoppel only as to matters actually in issue or points controverted, upon the determination of which the judgment or decree was rendered."
>
> 274 U.S., at 319.

Alternatively, the rule has been stated in the following manner:

> "The general principle announced in numerous cases is that a right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question or fact once so determined must, as between the same parties

or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified."

United States v. Moser,
266 U.S. 236, 241 (1924);
Southern Pac. R.R. v. United States,
168 U.S. 1, 48-49 (1897).

"The estoppel resulting from the thing adjudged does not depend upon whether there is the same demand in both cases, but exists, even although there be different demands, when the question upon which the recovery of the second demand depends has, under identical circumstances and conditions, been previously concluded by a judgment between the parties or their privies."

United States v. Moser,
266 U.S. 236, 241-42 (1924);
City of New Orleans v. Citizens' Bank,
167 U.S. 371, 396 (1897).

These rules are applicable in the instant case. The basic issue raised by petitioner's grievances was whether or not the respondent company had violated Article IX, Section 8, of the agreement between the parties. This issue was decided initially by the arbitrator, who found in favor of the respondent. The Opinion and Findings of the arbitrator were accepted and adopted by a state court of competent jurisdiction. These Findings, having been made part of the judgment of that court, are conclusive in all subsequent controversies between the same parties relating to these grievances. *Mason Lumber Co. v. Buchtel,* 101 U.S. 638, 639 (1880). Therefore, although the respondent contends, as held by the courts below, that the judgment of the Ohio Common Pleas Court is res adjudicata in this case, even if it be determined that the peti-

tioner's demand in its federal action differs from that in the previous state action, the determinative question upon which the petitioner's demand depends has been previously concluded by a judgment between the parties and the doctrine of estoppel by judgment is applicable.

CONCLUSION.

The District Court and Court of Appeals properly found the final judgment of the Ohio Common Pleas Court to be res adjudicata as to the issues sought to be raised by petitioner in its Federal action. Summary judgment was, therefore, properly granted to respondent by the District Court.

For these reasons, the petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit should be denied.

Respectfully submitted,

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